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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSHUA KEVIN BRADY,

Defendant and Appellant.

A133306

(Solano County
Super. Ct. No. FCR277071)

Defendant Joshua Kevin Brady appeals from a judgment following a contested probation revocation hearing and imposition of a 15-year aggregate prison sentence for possession for sale of methamphetamine, plus enhancements for prior controlled substance convictions and prior prison terms. Defendant's appellate counsel has raised no issues and asks this court for an independent review of the record to determine whether there are any issues that would, if resolved favorably to defendant, result in reversal or modification of the judgment. (*People v. Kelly* (2006) 40 Cal.4th 106; *People v. Wende* (1979) 25 Cal.3d 436.) Defendant was notified of his right to file a supplemental brief, but has not done so. Upon independent review of the record, we conclude no arguable issues are presented for review, and affirm the trial court's judgment.

BACKGROUND

On October 20, 2010, defendant executed a written waiver of rights form, which included waiver of his right to appeal from his conviction and entry of judgment on his plea of no contest to possession for sale of methamphetamine in violation of Health and

Safety Code section 11378. He was also advised in open court as to the terms and conditions of his no contest plea, and admitted three Health and Safety Code section 11370.2, subdivision (c), prior controlled substance convictions and three Penal Code section 667.5, subdivision (b), prior prison terms. In accordance with the agreed-to disposition, the trial court sentenced defendant to an aggregate of 15 years in prison, suspended execution of sentence and placed him on formal probation for five years, on numerous terms and conditions, including serving 252 days in the county jail (which was satisfied by credit for time served) and completing a two-year Delancey Street Program. Defendant was also ordered to pay various fines and fees: a \$200 restitution fund fine; a \$200 probation revocation fee, which was stayed; a \$30 security surcharge; a \$30 criminal conviction assessment; a \$50 drug lab fee; and a \$150 drug program fee, all to be paid within three years.

One month later, defendant called his probation officer and told her he was no longer in the Delancey Street Program. A week later, he failed to report to the probation department as directed by the officer. On November 30, 2010, the trial court issued a bench warrant for defendant's arrest, and his probation was administratively revoked.

Defendant was subsequently arrested and convicted of two new offenses in Yolo County and sentenced to state prison. On May 12, 2011, an order for removal was issued by the Solano County trial court.

After granting defendant's request for some "extra time" before the probation violation hearing, the court denied a further request for a continuance and proceeded to the revocation hearing on August 19, 2011. The prosecution presented testimony of defendant's probation officer, who testified defendant told her by phone he no longer was in the Delancey Street Program and then failed to report to the probation department. Defendant asked no questions of the officer. The prosecution also introduced into evidence a certified copy of defendant's rap sheet, showing two new criminal convictions in Yolo County. The court overruled defendant's hearsay objection and found defendant in violation of his probation.

In anticipation of the sentencing hearing, defendant filed a “Statement in Mitigation,” and at the September 19, 2011, hearing, his lawyer urged the court to impose a reduced prison term. The prosecution pointed out sentence had already been imposed and only execution had been suspended, and asked the court to impose the suspended 15-year sentence. The trial court terminated probation and imposed the sentence, ordering it to run concurrently with the prison sentence defendant was serving in the Yolo County case. Defendant was given 727 days of credit (368 actual and 359 conduct). The court imposed the previously stayed \$200 probation revocation fee, and imposed, but stayed a \$200 parole revocation fee. Defendant filed a timely notice of appeal on September 21, 2011.

DISCUSSION

Upon review of the record, we discern no arguable issues. Defendant was ably represented by counsel at all times during the probation revocation proceedings. He had a full and fair opportunity to present his case to the court. The court’s finding that defendant violated his probation is amply supported by the record. (See *People v. Urke* (2011) 197 Cal.App.4th 766, 772 [standard of proof in revocation proceedings is preponderance of the evidence].) The court also acted well within its discretion in refusing to reinstate probation and imposing the previously suspended sentence. (*Id.* at p. 773 [granting and revoking probation are discretionary with the court].)

DISPOSITION

The trial court’s probation violation finding and judgment are affirmed.

Banke, J.

We concur:

Marchiano, P. J.

Dondero, J.